



STATE OF NEW YORK
DEPARTMENT OF HEALTH
P.O. Box 11729
Albany, NY 12211

Notice of Decision

Decision Date: September 26, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000019254

[REDACTED]

[REDACTED]

On August 29, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's May 23, 2017 eligibility determination notice.

The enclosed Decision, rendered after that hearing, is issued by the Appeals Unit of NY State of Health.

If you have questions about your Decision, you can contact us by:

- Calling the Customer Service Center at 1-855-355-5777
- Sending Mail to:
NY State of Health Appeals
P.O. Box 11729
Albany, NY 12211
- Sending a Fax to 1-855-900-5557

When contacting NY State of Health about your appeal and/or the Decision, please refer to the Appeal Identification number and the Account ID at the top of this notice.

Legal Authority

We are sending you this notice in accordance with 45 Code of Federal Regulations (CFR) § 155.545.

If you need this information in a language other than English or you need assistance reading this notice, we can help you. Call 1-855-355-5777 (TTY - English: 1-800-662-1220) (TTY - Spanish: 1-877-662-4886).

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Decision Date: September 26, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000019254

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Issues

The issues presented for review by the Appeals Unit of NY State of Health are:

Did NY State of Health (NYSOH) properly terminate your qualified health plan for non-payment of premium, effective May 1, 2017?

Did NYSOH properly determine that, as of May 23, 2017, you do not qualify to enroll in a qualified health plan outside of the 2017 open enrollment period?

Procedural History

According to your NYSOH account, you were found conditionally eligible to receive up to \$159.00 per month in advance payment of the premium tax credit (APTC), effective January 1, 2017. This eligibility was for a limited period of time because more information was needed to confirm the information in your application. According to the November 18, 2017 eligibility determination notice, you needed to provide proof of citizenship status by February 6, 2017.

Also on November 18, 2016, NYSOH issued a notice confirming your enrollment in a silver-level QHP with a monthly premium responsibility of \$313.49, after your APTC of \$159.00 was applied, effective January 1, 2017.

On November 23, 2016, NYSOH issued a notice stating that the documentation you provided had been reviewed and it did not confirm the information in your application. The notice stated you needed to submit acceptable proof of citizenship status by February 6, 2017.

NO additional documentation was provided to NYSOH as of the February 6, 2017 deadline.

On February 13, 2017, NYSOH issued an eligibility determination notice stating that you were not eligible for Medicaid, Child Health Plus, the Essential Plan or to receive tax credits or cost-sharing reductions to help pay for the cost of insurance, and could not enroll in a qualified health plan at full cost, effective March 1, 2017. The reason provided was because you had not confirmed your citizenship status within the required timeframe.

Also on February 13, 2017, NYSOH issued a disenrollment notices stating that your silver-level QHP would end February 28, 2017.

On April 24, 2017, NYSOH received your updated application for health insurance.

On April 25, 2017, NYSOH issued an eligibility determination notice stating that you were eligible to receive up to \$143.00 per month in APTC, effective June 1, 2017. This eligibility was for a limited period of time because more information was needed to confirm the information in your application. The notice stated that you needed to provide proof of Citizenship status by July 23, 2017.

Also on April 25, 2017, NYSOH issued a plan enrollment notice confirming your enrollment in a silver-level QHP with a monthly premium responsibility of \$329.49, after your APTC of \$143.00 was applied. The notice stated that your plan enrollment start date and the application of your APTC was effective as of May 1, 2017.

Also on April 25, 2017, you submitted a copy of your U.S. passport as proof of your citizenship status ([REDACTED]). This document was verified as proof of citizenship on April 26, 2017 and your application for health insurance was updated at that time.

On April 27, 2017, NYSOH issued an eligibility determination notice, based on the systematic updated application, stating that you were eligible for APTC of \$143.00, effective June 1, 2017. The notice stated that you may be able to enroll in coverage if you qualified for a special enrollment period.

On May 17, 2017, NYSOH issued a disenrollment notice stating that your enrollment in your silver-level QHP was terminated, effective May 1, 2017,

because a premium payment had not been received by the health plan by the payment deadline.

On May 22, 2017, NYSOH received your updated application for health insurance and you attempted to enroll in a QHP but were unable to do so.

On May 23, 2017, NYSOH issued an eligibility determination notice stating in relevant part that you did not qualify to select a health plan outside of the open enrollment period for 2017.

On May 24, 2017, you spoke to NYSOH's Account Review Unit and appealed that eligibility determination insofar as you were not eligible to enroll in a health plan outside of the open enrollment period.

On August 29, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and closed at the end of the hearing.

Findings of Fact

A review of the record supports the following findings of fact:

- 1) You testified that, before May 16, 2017, you received your notices from NYSOH by regular mail.
- 2) According to your NYSOH account, no notices sent to you at the address listed on your NYSOH account have been returned as undeliverable.
- 3) According to your NYSOH account, your eligibility for health insurance ended effective March 1, 2017, because you had not provided proof of citizenship by the required February 6, 2017 timeframe.
- 4) According to your NYSOH account and your testimony, you updated your application for health insurance on April 24, 2017, and were allowed to enroll in a health plan at that time.
- 5) According to your NYSOH account, you submitted a copy of your U.S. passport on April 25, 2017 and this was verified as proof of citizenship on April 26, 2017.
- 6) According to your NYSOH account, the April 25, 2017 plan enrollment notice stated that your silver level-QHP enrollment start date was May 1, 2017 with a premium of \$329.49 after APTC of \$143.00 was applied starting May 1, 2017. The notice further informed you that, "[y]ou must pay the monthly premium to start and keep your coverage."

- 7) You testified that due to conflicting letters, it was “impossible” for you to determine when the premium payment was due to the health plan.
- 8) According to your NYSOH account, on May 16, 2017, the health plan initiated a cancellation of your plan due to non-payment of premium.
- 9) On May 17, 2017, NYSOH issued a disenrollment notice stating that your coverage in the silver-level QHP ended on May 1, 2017, because you did not pay your insurance bill by the payment deadline.
- 10) According to your NYSOH account and your testimony, you were denied a special enrollment period on May 23, 2017 because you did not have a qualifying event outside of the 2017 open enrollment period.
- 11) You testified that you have been without health insurance since March 1, 2017.
- 12) You testified that you want to enroll in a QHP going forward.
- 13) You testified that, since filing your application on May 22, 2017, there have been no other major changes to your household.

Conflicting evidence, if any, was considered and found to be less credible than the evidence noted above.

Applicable Law and Regulations

Appealable Issues

An applicant has the right to appeal to NYSOH’s Appeals Unit: (1) an eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions; (2) a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions; (3) an eligibility determination for an exemption; (4) a failure by NYSOH to provide timely notice of an eligibility determination 45 CFR § 155.505; and (5) a denial of a request for a special enrollment period (45 CFR § 155.505(b)(1)(iii), 45 CFR § 155.305(b), and 45 CFR § 155.420(d)).

Enrollment in a Qualified Health Plan

NYSOH must provide annual open enrollment periods during which time qualified individuals may enroll in a qualified health plan and enrollees may change qualified health plans (45 CFR § 155.410(a)(1)).

For the benefit year beginning on January 1, 2017, the annual open enrollment period began on November 1, 2016, and extended through January 31, 2017 (45 CFR § 155.410(e)(2)).

Special Enrollment Periods

After each open enrollment period ends, NYSOH provides special enrollment periods to qualified individuals. During a special enrollment period, a qualified individual may enroll in a qualified health plan, and an enrollee may change their enrollment to another plan. This is generally permitted when one of the following triggering events occur:

- (1) The qualified individual or his or her dependent either:
 - (i) Loses minimum essential coverage.
 - (ii) Is enrolled in any non-calendar year group health plan or individual health insurance coverage, even if the qualified individual or his or her dependent has the option to renew such coverage.
 - (iii) Loses pregnancy-related coverage.
 - (iv) Loses medically needy coverage as described under section 1902(a)(10)(C) of the Social Security Act only once per calendar year.
- (2)
 - (i) The qualified individual gains a dependent or becomes a dependent through marriage, birth, adoption, placement for adoption, or placement in foster care, or through a child support order or other court order.
 - (ii) the enrollee loses a dependent or is no longer considered a dependent through divorce or legal separation as defined by State law in the State in which the divorce or legal separation occurs, or if the enrollee, or his or her dependent, dies.
- (3) The qualified individual, or his or her dependent, becomes newly eligible for enrollment in a qualified health plan because he or she gains citizenship, status as a national, or lawful present or is no longer incarcerated.
- (4) The qualified individual's or his or her dependent's, enrollment or non-enrollment in a qualified health plan is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, misconduct, or inaction of an officer, employee, or agent of NYSOH, its instrumentalities, or a non-NYSOH entity providing enrollment assistance or conducting enrollment activities.

(5) The enrollee or, his or her dependent adequately demonstrates to NYSOH that the qualified health plan in which he or she is enrolled substantially violated a material provision of its contract in relation to the enrollee;

(6) The enrollee or enrollee's dependent is newly eligible or ineligible for advance payments of the premium tax credit, or change in eligibility for cost-sharing reductions.

(7) The qualified individual or enrollee, or his or her dependent, gains access to new qualified health plan as a result of a permanent move and either—

(i) Had minimum essential coverage for one or more days during the 60 days preceding the date of the permanent move, or

(ii) Was living outside of the United States or in a United States territory at the time of the permanent move;

(8) The qualified individual or dependent who gains or maintains status as an Indian may enroll in a qualified health plan or change from one plan to another, once per month.

(9) The qualified individual or enrollee, or his or her dependent, demonstrates to the Exchange, in accordance with guidelines issued by HHS, that the individual meets other exceptional circumstances as the Exchange may provide;

(10) A qualified individual or enrollee—

(i) Is a victim of domestic abuse or spousal abandonment, including a dependent or unmarried victim within a household, is enrolled in minimum essential coverage and seeks to enroll in coverage separate from the perpetrator of the abuse or abandonment; or

(ii) Is a dependent of a victim of domestic abuse or spousal abandonment, on the same application as the victim, may enroll in coverage at the same time as the victim;

(11) A qualified individual or dependent—

(i) Applies for coverage through NYSOH during the annual open enrollment period or due to a qualifying event, is assessed as potentially eligible for Medicaid or Child Health Plus and is determined ineligible for Medicaid or Child Health Plus either after

open enrollment has ended or more than 60 days after the qualifying event; or

(ii) Applies for coverage at their Local Department of Social Services or Human Resources Administration during the annual open enrollment period, and is determined ineligible for Medicaid or Child Health Plus after open enrollment has ended;

(12) The qualified individual or enrollee, or his or her dependent, adequately demonstrates to NYSOH that a material error related to plan benefits, service area, or premium influenced the qualified individual's or enrollee's decision to purchase a qualified health plan; or

(13) At the option of NYSOH, the qualified individual provides satisfactory documentary evidence to verify his or her eligibility for an insurance affordability program or enrollment following termination of enrollment due to a failure to verify such status within 90 days.

(45 CFR § 155.420(d)).

Generally, if a triggering life event occurs, the qualified individual or enrollee has 60 days from the date of a triggering event to select a qualified health plan (45 CFR § 155.420(c)(1)).

However, a loss of health insurance coverage such as that referenced above does not include,

“voluntary termination of coverage or other loss due to—

(1) Failure to pay premiums on a timely basis, including COBRA premiums prior to expiration of COBRA coverage, or

(2) Situations allowing for a rescission as specified in 45 CFR [§] 147.128” such as failure to comply with other requirements (45 CFR § 147.128(b))

(45 CFR § 155.420(e)).

Legal Analysis

The first issue under review is whether NYSOH properly terminated your silver-level QHP for non-payment of premium, effective, May 1, 2017.

On February 13, 2017, you were disenrolled from your silver-level QHP because you were no longer eligible to enroll in health insurance through NYSOH. This

was because you had not submitted proof of citizenship within the required time frame in which to do so.

On April 24, 2017, you updated your account and NSYOH redetermined your eligibility for APTC of \$143.00 per month effective June 1, 2017. At that time, NYSOH allowed you to enroll in a QHP, albeit in error since you did not have a triggering event that would qualify you for a special enrollment period to enroll in a health plan outside the open enrollment period. On April 25, 2017, NSYOH issued a plan enrollment notice confirming your silver-level QHP enrollment start date was May 1, 2017 with a premium of \$329.49 after APTC of \$143.00 was applied starting May 1, 2017. You testified that due to conflicting letters, it was “impossible” for you to determine when the premium payment was due to the health plan.

The record reflects that on May 16, 2017, the health plan initiated a cancellation of your plan due to non-payment of premium. On May 17, 2017 NYSOH issued a notice stating that you were disenrolled from your health plan for non-payment of the premium, effective May 1, 2017.

NYSOH Appeals Unit only has the authority to review issues related to the following: (1) an eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (2) a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (3) an eligibility determination for an exemption, (4) a failure to provide timely notice of an eligibility determination and (5) a denial of a special enrollment period.

Since the Appeals Unit is not given the authority to review termination of enrollment due to non-payment of premiums, we cannot reach the merits as to whether or not you were properly terminated from your health plan for non-payment of premiums. Therefore, your appeal of the May 17, 2017 disenrollment notice is DISMISSED as a non-appealable issue.

The second issue under review is whether NYSOH properly determined that you did not qualify for a special enrollment period, as of May 23, 2017, to enroll in a QHP outside of the 2017 open enrollment period.

NYSOH provided an open enrollment period from November 1, 2016 until January 31, 2017. As this decision previously notes, on February 13, 2017, you were disenrolled from your silver-level QHP because you were no longer eligible to enroll in health insurance through NYSOH because you had not submitted proof of citizenship within the required time frame in which to do so.

On April 24, 2017, you updated your account and NSYOH allowed you to enroll in a QHP, effective May 1, 2017, although you did not experience a triggering event to qualify for a special enrollment period. On May 17, 2017, NYSOH issued

a disenrollment notice, effective May 1, 2017, because you had not paid your premium within the required timeframe.

On May 22, 2017, you submitted an updated application for health insurance and requested to enroll in a QHP. On May 23, 2017, NYSOH issued a notice stating that you did not qualify to enroll in a QHP outside of the open enrollment period. While technically you were within the previous 60 day special enrollment period to select a health plan when you updated your application on April 24, 2017, this 60 day rule does not apply in your case since that period was granted in error. One must have a valid special enrollment period for the 60 day rule to be invoked.

Once the annual open enrollment period ends, a health plan enrollee must qualify for a special enrollment period in order to enroll in, or change to another health plan offered in NYSOH. In order to qualify for a special enrollment period, a person must experience a triggering event.

Here, there is no evidence in the record to establish grounds for a special enrollment period. You testified that there have been no changes to your household in 2017.

Though you did lose health coverage as a result of the May 1, 2017 disenrollment, the loss of health insurance coverage in this case cannot be considered a triggering event for a special enrollment period, because it was a result of non-payment of your premiums which NYSOH considers a voluntary action causing the termination of your coverage.

The credible evidence of record indicates that, since the open enrollment period closed on January 31, 2017, and since your updated application of May 23, 2017, you have not experience a triggering event that would qualify you for a special enrollment period as of the date of the hearing.

Therefore, the May 23, 2017, eligibility determination notice, to the extent it denied you a special enrollment period, was correct and is AFFIRMED.

Decision

Your appeal of the May 17, 2017 disenrollment notice is DISMISSED as a non-appealable issue.

The May 23, 2017, eligibility determination notice, to the extent it denied you a special enrollment period, is AFFIRMED.

Effective Date of this Decision: September 26, 2017

If you need this information in a language other than English or you need assistance reading this notice, we can help you. Call 1-855-355-5777 (TTY - English: 1-800-662-1220) (TTY – Spanish: 1-877-662-4886).

How this Decision Affects Your Eligibility

Your enrollment in your silver-level QHP ended on its proposed date of inception; that is, as of May 1, 2017.

You do not qualify for a special enrollment period at this time.

If You Disagree with this Decision (Appeal Rights)

This Decision is final unless you submit an appeal request to the Federal Marketplace or bring a lawsuit under New York Civil Practice Law and Rules, Article 78.

You may bring a lawsuit on any Appeals Unit decision in New York State court in accordance with Article 78 of the New York Civil Practice Law and Rules. This must be done within four months of the Decision Date, which appears on the first page of this Decision.

Additionally, Appeals Unit decisions on issues involving eligibility for qualified health plans, advance premium tax credits, and cost-sharing reductions may be appealed to the Federal Marketplace. This must be done within 30 days of the Decision Date, which appears on the first page of this Decision (45 CFR § 155.520(c)).

If you have questions about appealing to the Federal Marketplace, you can contact them in any of the following ways:

- By calling the Customer Service Center at 1-800-318-2596
- By mail at:
Health Insurance Marketplace
Attn: Appeals
465 Industrial Blvd.
London, KY 40750-0061
- By fax: 1-877-369-0129

If you wish to be represented by an attorney in bringing an outside appeal and do not know how to go about getting one, you may contact legal resources available to you. You may, for example, contact the local County Bar Association, Legal Aid, or Legal Services.

If you need this information in a language other than English or you need assistance reading this notice, we can help you. Call 1-855-355-5777 (TTY - English: 1-800-662-1220) (TTY – Spanish: 1-877-662-4886).

If You Have Questions about this Decision (Customer Service Resources):

You can contact us in any of the following ways:

- By calling the Customer Service Center at 1-855-355-5777
- By mail at:
NY State of Health Appeals
P.O. Box 11729
Albany, NY 12211
- By fax: 1-855-900-5557

Summary

Your appeal of the May 17, 2017 disenrollment notice is **DISMISSED** as a non-appealable issue.

The May 23, 2017, eligibility determination notice, to the extent it denied you a special enrollment period, is **AFFIRMED**.

Your enrollment in your silver-level QHP ended on its proposed date of inception; that is, as of May 1, 2017.

You do not qualify for a special enrollment period at this time.

Legal Authority

We are issuing this determination in accordance with 45 CFR § 155.545.

A Copy of this Decision Has Been Provided To:



Getting Help in a Language Other than English

This is an important document. If you need help to understand it, please call 1-855-355-5777. We can give you an interpreter for free in the language you speak.

Español (Spanish)

Este es un documento importante. Si necesita ayuda para entenderlo, llame al 1-855-355-5777. Le proporcionaremos un intérprete sin ningún costo.

中文 (Traditional Chinese)

這是重要的文件。如果您需要獲得關於瞭解文件內容方面的協助，請致電 1-855-355-5777。我們可以為您免費提供您所使用語言的翻譯人員。

Kreyòl Ayisyen (Haitian Creole)

Sa a se yon dokiman ki enpòtan. Si ou bezwen èd pou konprann li, tanpri rele nimewo 1-855-355-5777. Nou kapab ba ou yon entèprèt gratis nan lang ou pale a.

中文 (Simplified Chinese)

这是一份重要的文件。如果您需要帮助理解此文件，请打电话至 1-855-355-5777。我们可以为您提供相应语种的口译服务。

Italiano (Italian)

Questo è un documento importante. Per qualsiasi chiarimento può chiamare il numero 1-855-355-5777. Possiamo metterle a disposizione un interprete nella sua lingua.

한국어 (Korean)

중요한 서류입니다. 이해하는 데 도움이 필요하시면 1-855-355-5777 번으로 연락해 주십시오. 귀하의 언어에 대한 무료 통역 서비스가 제공됩니다.

Русский (Russian)

Это важный документ. Если Вам нужна помощь для понимания этого документа, позвоните по телефону 1-855-355-5777. Мы можем бесплатно предоставить Вам переводчика Вашего языка.

العربية (Arabic)

هذه وثيقة مهمة. إذا كنت بحاجة إلى مساعدة لفهم محتواها، يُرجى الاتصال بالرقم 1-855-355-5777. يُمكننا توفير مترجم فوري لك باللغة التي تتحدثها مجاناً.

বাংলা (Bengali)

এটি এক গুরুত্বপূর্ণ নথি। এটি বুঝতে আপনার যদি সাহায্যের প্রয়োজন হয় তাহলে, অনুগ্রহ করে 1-855-355-5777 নম্বরে কল করুন। আপনি যে ভাষায় কথা বলেন বিনামূল্যে আমরা আপনাকে একজন দোভাষী দিতে পারি।

If you need this information in a language other than English or you need assistance reading this notice, we can help you. Call 1-855-355-5777 (TTY - English: 1-800-662-1220) (TTY – Spanish: 1-877-662-4886).

Français (French)

Ceci est un document important. Si vous avez besoin d'aide pour en comprendre le contenu, appelez le 1-855-355-5777. Nous pouvons mettre gratuitement à votre disposition un interprète dans votre langue.

हिंदी (Hindi)

यह एक महत्वपूर्ण दस्तावेज़ है। अगर आपको इसे समझने में सहायता चाहिए, तो कृपया 1-855-355-5777 पर कॉल करें। हम आपकी भाषा बोलने वाला एक दुभाषिया निःशुल्क उपलब्ध करवा सकते हैं।

日本語 (Japanese)

これは重要な書類です。理解するために支援が必要な場合は、1-855-355-5777 にお電話ください。通訳を無料で提供いたします。

नेपाली (Nepali)

यो एउटा महत्वपूर्ण कागजात हो। यसलाई बुझ्न तपाईंलाई मद्दत चाहिन्छ भने, कृपया 1-855-355-5777 मा फोन गर्नुहोस्। हामीले तपाईंले बोल्ने भाषामा तपाईंलाई निःशुल्क दोभाषे उपलब्ध गराउन सक्छौं।

Polski (Polish)

To jest ważny dokument. W przypadku konieczności skorzystania z pomocy w celu zrozumienia jego treści należy zadzwonić pod numer 1-855-355-5777. Istnieje możliwość uzyskania bezpłatnej usługi tłumacza języka, którym się posługujesz.

Twi (Twi)

Krataa yi ye tow krataa a ho hia. Se wo hia eho nkyerekyeremu a, ye sre wo, fre 1-855-355-5777. ye&etumi ama wo obi a okyerε kasa a woka no ase ama wo kwa a wontua hwee.

(Urdu) اردو

یہ ایک اہم دستاویز ہے۔ اگر آپ کو اسے سمجھنے کے لیے مدد کی ضرورت ہے تو براہ کرم 1-855-355-5777 پر کال کریں۔ ہم آپ کو آپ کی مادری زبان میں ایک مفت مترجم فراہم کر سکتے ہیں۔

Tiếng Việt (Vietnamese)

Đây là tài liệu quan trọng. Nếu quý vị cần trợ giúp để hiểu tài liệu này, vui lòng gọi 1-855-355-5777. Chúng tôi có thể cung cấp thông dịch viên miễn phí nói ngôn ngữ của quý vị.

אידיש (Yiddish)

דאס איז א וויכטיגער דאקומענט. אויב איר דארפט הילף עס צו פארשטיין, ביטע רופט 1-855-355-5777. מיר קענען אייך געבן א דאלמעטשער פריי פון אפצאל אין די שפראך וואס איר רעדט.

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